

MARY BETH KELLY  
CHIEF JUDGE



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Carl Gromek, Esq.  
State Court Administrator  
State Court Administrative Office  
Michigan Hall of Justice  
925 W. Ottawa  
PO Box 30048  
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Dear Mr. Gromek,

The judges of the Third Judicial Circuit Court oppose the proposed amendment to MCR 8.103 insofar as the proposed amendment adds a new section four to this court rule. The proposed new section requires the State Court Administrator to file a request for investigation with the Judicial Tenure Commission against a judge who "consistently fails" to comply with the caseload management standards articulated in Administrative Order No. (AO) 2003-7 or fails to accurately report all matters undecided in compliance with the reporting requirement articulated in MCR 8.107. The judges of our court also object to the proposed amendments to MCR 8.107 that require judges to decide matters within 35 days after submission and to make a report of those matters not decided within 56 days after submission. Numerous reasons support our opposition to the adoption of these proposed amendments to MCR 8.103 and 8.107.

First, the amendment to MCR 8.103 is unnecessary. MCR 9.205(B)(1)(b) already makes a judge's "persistent neglect in [the] timely performance of judicial duties" grounds for disciplinary action against a judge, and pursuant to MCR 9.207, the State Court Administrator is already empowered to bring matters to the Commission's attention for investigation. If the State Court Administrator desires to have the Commission investigate a judge on account of the State Court Administrator's belief that the judge has persistently neglected to timely perform judicial duties under the provisions of AO 2003-7, the State Court Administrator is already empowered to take such action. No further delineation of this power is necessary.

Second, application of the proposed amendment to MCR 8.103 would be problematic in light of the ambiguous standard that the State Court Administrator is apply in making a decision to request the Commission to conduct an investigation against a judge. As noted, under the proposed rule what triggers the State Court Administrator's duty to file a request for investigation against a judge is where the State Court Administrator deems that a judge has "consistently failed" to comply with caseload management standards. The proposed rule does not offer any guidance on what constitutes a consistent failure. Are two instances of failing to comply with the standards sufficient, or are three or four instances sufficient to impose on the State Court Administrator the proposed duty to file a request for investigation? The lack of an objective standard by which to determine what constitutes a consistent failure of a judge to meet the standards could lead to uneven or seemingly arbitrary enforcement.

Third, assuming that the "consistently fails" standard of the proposed amendment to MCR 8.103 is sufficiently unambiguous to permit even handed application, utilization of this standard alone as the measure for filing a request for investigation against a judge ignores that in our Circuit the managing of a case load, it is very often impossible to meet the time standards due to any number of factors outside of the judge's control. Examples of these situations would include cases held in abeyance while interlocutory appeals are taken, or cases remanded to a trial court for further action. More specific examples unique to each of the Court's three divisions include the following: With respect to the Court's Civil Division, a Civil Division judge's docket typically includes large scale class actions, product liability cases or commercial litigation, which not only take an inordinate amount of time to resolve due to the complexity of the issues raised in these types of cases, but also take up time that a judge might use to resolve less complicated matters in a manner that would comply with the time standards. In the Criminal Division, judges are routinely bombarded with motions for relief from judgment that can be problematic in resolving in a timely manner because of the sheer volume of motions being filed. Also, these motions can be difficult to resolve in a timely fashion because they often stem from cases long concluded which can lead to administrative problems in securing the court files and transcripts necessary to properly evaluate the arguments that the defendants raise in these motions.

Finally, in the Juvenile Section of the Court's Family Division, again the sheer volume of these cases frequently overwhelms the ability of even the most diligent of judges to dispose of all their cases in a timely fashion especially, in light of the fact that these cases frequently involve multiple hearings and also involve commonly encountered problems with service of process. While we are addressing these issues through a Juvenile Docket Management Task Force to ensure that our docket management provides the most systematic efficiency possible, the volume of our Juvenile docket renders the time standards extremely problematic in the Juvenile Division. In short, a myriad of real world circumstances often will cause a judge to fail to resolve cases within the time standards articulated in AO 2003-7 through no fault of the judge.

Hence, the use of the "consistently fails" standard of proposed amendment to MCR 8.103 as the test that triggers the State Court Administrator's duty to file a request

for investigation is too unrealistic and exacting. Its implementation would likely result in the State Court Administrator filing repeated and numerous requests for investigation with the Commission against judges whose conduct is being evaluated under a standard that is, in many instances, impossible to meet. Accordingly, the standard articulated in the proposed amendment is impractical.

Finally, the above noted observations concerning the problems that judges frequently encounter in resolving cases in a timely fashion reflect that the proposed amendment to MCR 8.107 should not be adopted. Presently, a judge is under an obligation to make a report about any matter that remains undecided four or more months after submission. The proposed amendments cut this time almost in half. For the reasons articulated above, the time standards of the proposed amendment to MCR 8.107 are unrealistically too short for our circuit in light of the volume of pending cases and post judgment matters for which each judge has responsibility.

In sum, the proposed amendment to MCR 8.103(4) is unnecessary, vague and impractical. The proposed amendments to MCR 8.107 are unrealistic. The judges of the Third Judicial Circuit Court, therefore, respectfully request that the Supreme Court decline to adopt these proposed amendments.

Very truly yours,



**Mary Beth Kelly**

cc: Judges of the Third Circuit Court